REMARKS

Claims 1-8, 11, 12, 15 and 16 are all the claims pending in the application. Claims 1, 12 and 16 have been amended. No new matter has been introduced.

Claim Objections

The Examiner has objected to claims 1, 12 and 16 for alleged informality. In response, Applicant makes appropriate correction. Accordingly, withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. 112

The Examiner rejected claims 1-8, 11, 12, 15 and 16 under 35 U.S.C. 112 for being allegedly indefinite. Applicant respectfully traverses this rejection in view of the amendments to claims and further in view of the following arguments.

Specifically, Applicant amended the claims to recite "matching, in the computer system, the first inputs and the bid prices and the offer prices and forming contracts based, at least in part, on the matching." In rejecting the above claims, the Examiner states that it is not clear how merely matching data can cause a contract to be formed. Applicant respectfully submits that the aforesaid amendment overcame the Examiner's rejection, because the claims 1, 12 and 16 now state that the contracts are formed based, at least in part, on the matching. Thus, the contracts could be formed based on the matching as well as additional considerations. This addresses the Examiner's concern that it is not clear how merely matching data can cause a contract to be formed. Accordingly, the amended claims 1, 12 and 16 and dependent claims 2-8, 11 and 15 are not indefinite. Therefore, withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. 101

The Examiner rejected claims 1-8, 11, 12, 15 and 16 under 35 U.S.C. 101 for being allegedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection in view of the amendments to claims and further in view of the following arguments.

Specifically, Applicant amended claims 1, 12 and 16 to recite a feature of the invention wherein the steps recited in those claims are performed by a computer system. Support for the amendment could be found, for example, in paragraph [0038] of the specification. In this regard, Applicant respectfully submits that the computer system recited in the amended claims 1, 12 and 16 constitutes a particular machine and, therefore, the aforesaid amended claims 1, 12 and 16 as well as their dependent claims 2-8, 11 and 15 are patentable pursuant to the In re Bilski, 545 F.3d 943, 88 U.S.P.Q.2d 1385 ("A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing."). Accordingly, withdrawal of the rejection is respectfully requested.

Rejections Under 35 U.S.C. 103

Claims 1 and 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Mosler (US Patent No. 6,304,858) in view of McGill (U.S. Patent Application Publication No. 2003/0101125).

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Mosler (US Patent No. 6,304,858) in view of McGill (U.S. Patent Application Publication No. 2003/0101125) and further in view of Lara (U.S. Patent Application Publication No. 2004/0019555).

Applicant respectfully traverses these rejections in view of the amendments to the claims and further in view of the following arguments.

Claims 1, 12 and 16

Independent claims 1, 12 and 16 recite limitations, wherein the final settlement price at the settlement of the contract is determined in accordance with the contract terms, by reference to both said first level and said second level, which are values of the underlying actually observed at first reference time and second reference time prior to settlement of the contract. Applicant respectfully submits that neither Mosler nor McGill, taken alone or in combination, teach or suggest the aforesaid feature of the invention.

In more detail, Mosler discloses a method of calculating a model price for a contract using a net present value of future stream of cash flows discounted by swap interest rates applicable in each future time period when the cash flow is received, see Mosler, col. 7, lines 40-51. However, Applicant respectfully submits that the contract price determination method taught by Mosler is entirely different from the method of the present invention.

First, Applicant respectfully submits that claims 1, 12 and 16 specifically require two actual observations of the actual value of the underlying to take place at two different times. Specifically, these claims recite "the first level of the underlying being an actual value of the underlying actually observed at said first reference time" and "the second level of the underlying being the actual value of the underlying actually observed at a second reference time." On the other hand, neither the future cash flows used by Mosler to determine the NPV price (settlement price), nor the calculated NPV price of the cash flows itself is the actual value of an underlying that is actually observed at two different times. To the contrary, for each NPV price (settlement price), the future cash flows of Mosler are all determined at one time – at the time of the calculation of the respective NPV value. Accordingly, Mosler does not teach or suggest limitations "the first level of the underlying being an actual value of the underlying actually

limitations "the first level of the underlying being an actual value of the underlying actually observed at said first reference time" and "the second level of the underlying being the actual value of the underlying actually observed at a second reference time."

Moreover, while Mosler teaches the concept of an autoroll contract, which does involve subsequent determinations of the model price, these determinations are used to determine further settlement prices at which the buyer and seller are required to settle having settled on the first effective date. However, this is very different from the present invention, as it is recited in claims 1, 12 and16, which all require reliance on two determinations of the level of the underlying to determine a single settlement price at which the buyer and seller settle. In other words, Mosler uses multiple subsequent determinations of the model price to determine additional different settlement prices, while the present invention uses two determinations of the level of the underlying to determine the same single settlement price. To emphasize this distinction, Applicant amended claims 1, 12 and 16 to require that the two levels of the underlying are used to calculate a single final settlement price. This new limitation clearly distinguishes the pending claims 1, 12 and 16 from the autoroll concept taught by Mosler.

Applicant also notes that the model contract price referred to by the Examiner as being allegedly equivalent to the claimed underlying (office action cites to col. 3 lines 64-67 of Mosler).. In this regard, Applicant respectfully submits that Mosler never teaches using the levels of the contact price taken at two different times to determine the value of the model price. What Mosler actually does, it uses the future cash flow to determine the model contract price, see Mosler, col. 7, lines 40-51. Therefore, even though Mosler does disclose the model contract price (col. 3 lines 64-67 of Mosler), Mosler never uses two levels of the contract price to

calculate a single final settlement price, as recited in the pending claims 1, 12 and 16. This fact clearly differentiates the claimed invention from Mosler.

Pursuant to the foregoing, without admitting that Mosler teaches any other limitations of the pending claims, Mosler fails to teach or suggest a limitation of amended claims 1, 12 and 16, wherein the final settlement price at the settlement of the contract is determined in accordance with the contract terms, by reference to both said first level of the underlying and said second level of the underlying, which are actual values of the underlying actually observed at first reference time and second reference time prior to settlement of the contract, the underlying being "a specified presently observable quantity selected from a group consisting of a stock price, a commodity price, a financial asset price, a basket of financial assets price, a financial index value and a financial contract price." The second cited reference, McGill, fails to remedy the aforesaid deficiency of Mosler. For this reason, the prior art cited by the Examiner fails to teach all the limitations of the claims 1, 12 and 16, and, therefore, these claims are not unpatentable over Mosler and McGill.

Second, the independent claims 1, 12 and 16 have been amended to recite a feature of the invention, wherein the two claimed levels of the underlying are determined at first and second reference times, which are after the contract begins trading but before the settlement of the contract. To this end, claims 1, 12 and 16 specify that "the contract is available to trade before said first reference time," the second reference time being later than the first reference time, see for example, paragraph [0146] relating to Figure 1. Applicant respectfully submits that neither Mosler nor McGill, taken alone or in combination teach or suggest this new limitation. This provides yet an additional reason for patentability of claims 1, 12 and 16 over Mosler and

McGill.Thus, for all the foregoing reasons, the amended independent claims 1, 12 and 16 are not unpatentable over Mosler and McGill.

Dependent Claims

Claims 2-7, 11 and 15 depend from claim 1. With respect to the rejection of dependent claims 2-7, 11 and 15, while continuing to traverse the Examiner's characterization of the teachings of the references used by the Examiner in rejecting these claims, Applicant respectfully submits that these claims are patentable by definition, by virtue of their dependence upon their respective patentable independent base claims 1 and 12.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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